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Ruan Transport Corp. and Teamsters Local 705, affiliated with the International Brotherhood of Teamsters. Case 13–CA–46555

April 13, 2011

DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Teamsters Local 705, affiliated with the International Brotherhood of Teamsters (the Union) on January 28, 2011, the Acting General Counsel issued the complaint on February 8, 2011, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 13–RC–21909. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On March 2, 2011, the Acting General Counsel filed a Motion for Summary Judgment. On March 3, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, which included a Motion for Summary Judgment. The Respondent also filed a motion to supplement the record, seeking to add to the record in the instant proceeding documents and an exhibit that were part of the record in the underlying representation case. The Acting General Counsel filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, response, and motion to supplement the record, the Respondent admits its refusal to bargain but contests the validity of the Union's certification based on the Board's disposition of a determinative challenged ballot in the representation proceeding. All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence,

nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Iowa corporation, with an office and place of business in Franklin Park, Illinois (the facility), has been engaged in the business of truck transportation and delivery services through contract carriage arrangements.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, has earned gross revenue in excess of \$500,000 and has purchased and received at its facility goods and material valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a representation election held on April 1, 2010, and a runoff election held on June 2, 2010, the Board certified the Union on November 30, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and warehouse spotters/drivers employed by the Employer based at the Castle Metal facility currently located at 3400 North Wolf Road in Franklin Park, IL, but ex-

¹ We therefore deny the Respondent's Motion for Summary Judgment. Further, we deny the Respondent's motion to supplement the record. As stated above, the Board does not redetermine representation issues in unfair labor practice proceedings unless a party presents previously unavailable evidence or alleges other special circumstances that warrant reconsideration. See also *National Van Lines*, 123 NLRB 1272, 1273 (1959), enf. denied on other grounds 273 F.2d 402 (7th Cir. 1960) (Board held that the Act does not require in an unfair labor practice case that a prior representation case be admitted into evidence). Of course, upon petition for court enforcement or review of a Board order, the record in the underlying representation case will be included as part of the entire record that must be filed, as stated in Sec. 9(d) of the Act. Id. at 1274.

cluding all dispatchers, supervisors, clerical, security personnel and professionals as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

| | |
|--------------------|-----------------------------------|
| Andrew Bounds | Vice President |
| George Kent Havens | Vice President of Labor Relations |

On December 21, 2010, the Union requested that the Respondent meet to bargain collectively with it as the exclusive collective-bargaining representative of the unit. By letter dated January 19, 2011, the Respondent declined the Union's request and since that date the Respondent has refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since January 19, 2011, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Ruan Transport Corp., Franklin Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Teamsters Local 705, affiliated with the International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers and warehouse spotters/drivers employed by the Employer based at the Castle Metal facility currently located at 3400 North Wolf Road in Franklin Park, IL, but excluding all dispatchers, supervisors, clerical, security personnel and professionals as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Franklin Park, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.³ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facilities involved in

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 19, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 13, 2011

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time truck drivers and warehouse spotters/drivers employed by us based at our Castle Metal facility currently located at 3400 North Wolf Road in Franklin Park, IL, but excluding all dispatchers, supervisors, clerical, security personnel and professionals as defined in the Act.

RUAN TRANSPORT CORP.

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local 705, affiliated with the International Brotherhood of Teamsters, as the exclusive collective-representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.